

## Environmental Protection Agency

## § 24.12

days before the hearing respondent may, but is not required to, submit for inclusion in the administrative record information and argument supporting respondent's positions on the facts, law and relief, as each relates to the order in question. A copy of any information or argument submitted by respondent shall be served such that the Clerk and petitioner receive same at least five (5) business days before hearing.

(c) *Postponment of hearing.* The Presiding Officer may grant an extension of time for the conduct of the hearing upon written request of either party, for good cause shown, and after consideration of any prejudice to other parties. The Presiding Officer may not extend the date by which the request for hearing is due under § 24.05(a).

(d) *Location of hearing.* The hearing shall be held in the city in which the relevant EPA Regional Office is located, unless the Presiding Officer determines that there is good cause to hold it in another location.

### **§ 24.11 Hearing; oral presentations and written submissions by the parties.**

The Presiding Officer shall conduct the hearing in a fair and impartial way, taking action as needed to avoid unnecessary delay, exclude redundant material and maintain order during the proceedings. Representatives of EPA shall introduce the administrative record and be prepared to summarize the basis for the order. The respondent shall have a reasonable opportunity to address relevant issues and present its views through legal counsel or technical advisors. The Presiding Officer may also allow technical and legal discussions and interchanges between the parties, including responses to questions to the extent deemed appropriate. It is not the Agency's intent to provide EPA or respondent an opportunity to engage in direct examination or cross-examination of witnesses. The Presiding Officer may address questions to the respondent's or EPA's representative(s) during the hearing. Each party shall insure that a representative(s) is (are) present at the hearing, who is (are) capable of responding to questions and articulating that party's position on the law and facts at issue. Where respondent can demonstrate that

through no fault of its own certain documents supportive of its position could not have been submitted before hearing in accordance with the requirements of § 24.10(b), it may submit such documents at the hearing. Otherwise no new documentary support may be submitted at hearing. The Presiding Officer may upon request grant petitioner leave to respond to submissions made by respondent pursuant to this section or § 24.10(b). The Presiding Officer shall have the discretion to order either party to submit additional information (including but not limited to posthearing briefs on undeveloped factual, technical, or legal matters) in whatever form he deems appropriate either at or after the hearing.

### **§ 24.12 Summary of hearing; Presiding Officer's recommendation.**

(a) As soon as practicable after the conclusion of the hearing a written summary of the proceeding shall be prepared. This summary shall, at a minimum, identify:

(1) The dates of and known attendees at the hearing; and

(2) The bases upon which the respondent contested the terms of the order.

The summary must be signed by the Presiding Officer.

(b) The Presiding Officer will evaluate the entire administrative record and, on the basis of that review and the representations of EPA and respondent at the hearing, shall prepare and file a recommended decision with the Regional Administrator. The recommended decision must address all material issues of fact or law properly raised by respondent, and must recommend that the order be modified, withdrawn or issued without modification. The recommended decision must provide an explanation with citation to material contained in the record for any decision to modify a term of the order, to issue the order without change, or to withdraw the order. The recommended decision shall be based on the administrative record. If the Presiding Officer finds that any contested relief provision in the order is not supported by a preponderance of the evidence in the record, the Presiding Officer shall recommend that the order be modified and issued on